

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

United States of America,

v.

Ricky Ricardo Daniel, #21490-001,

Petitioner.

C/A No. 3:05-1321-GRA-JRM

ORDER

[Written Opinion]

This matter is before the Court on the petitioner's motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255.

Petitioner brings this motion *pro se*. This Court is required to construe *pro se* pleadings liberally. Such pleadings are held to a less stringent standard than those drafted by attorneys. *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir.), *cert. denied*, 439 U.S. 970 (1978). This Court is charged with liberally construing a pleading filed by a *pro se* litigant to allow for the development of a potentially meritorious claim. *Cruz v. Beto*, 405 U.S. 319 (1972).

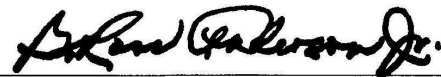
Because Petitioner was not convicted in this Court and therefore had no criminal case here in which a §2244 motion could be docketed, and because *pro se* pleadings must be liberally construed, the Clerk of Court ignored printed references to §2255 on the form and docketed the pleading as a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. §2241, and this case was then submitted for initial review by a

magistrate pursuant to 28 U.S.C. §636(b)(1), and Local Rule 73.02(B)(2)(e), D.S.C. A letter was then received by Petitioner in which he stated that the pleading had been inadvertently submitted to this Court and requested the return of same. The magistrate's Report and Recommendation recommends Petitioner's letter be construed as a Motion to Voluntarily Dismiss this case and all documents Petitioner submitted to the Court that were docketed in this case be returned to him. Petitioner then filed a document on May 31, 2005 labeled "Specific Objections" in which he states he is in agreement with the Report and Recommendation.

IT IS THEREFORE ORDERED that this case is DISMISSED without prejudice.

IT IS FURTHER ORDERED that copies of each document submitted by Petitioner be returned to him as soon as reasonably possible.

IT IS SO ORDERED.



G. ROSS ANDERSON, JR.
UNITED STATES DISTRICT JUDGE

Anderson, South Carolina

June 2, 2005.

NOTICE OF RIGHT TO APPEAL

Petitioner has the right to appeal this order within sixty (60) days from the date of this Order, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure. Failure to meet this deadline, as modified by Rule 4 of the Federal Rules of Appellate Procedure, will waive the right to appeal.